

## **REMARKS**

### **I. INTRODUCTION**

Claims 1, 6-11, 13, 14, and 16 have been amended. Support for the amendments can be found at least at ¶¶ [0052] and [0053] of the published application. Thus, claims 1-26 and 66 remain pending in the present application. No new matter has been added. In light of the above amendments and the following remarks, Applicants respectfully submit that all presently pending claims are in condition for allowance.

### **II. THE 35 U.S.C. § 112 REJECTION SHOULD BE WITHDRAWN**

Claims 1-26 and 66 stand rejected under 35 U.S.C. §112, second paragraph, for being indefinite. In view of the amendments to the claims, the withdrawal of this rejection is respectfully requested.

### **III. THE DOUBLE PATENTING REJECTION SHOULD BE WITHDRAWN**

Claims 1-26 and 66 stand rejected on the ground of nonstatutory double patenting over claims 1-11 of Noordhuis et al. (U.S. Patent No. 7,503,254). In view of the terminal disclaimer filed herewith, Applicants respectfully request the withdrawal of this rejection.

### **IV. THE 35 U.S.C. § 102(b) REJECTION SHOULD BE WITHDRAWN**

Claims 1-26 stand rejected under 35 U.S.C. §102(b) for being anticipated by Brouwer et al. (European Patent App. No. EP 1371311).

Claim 1 has been amended to recite “[a] device for preparing a beverage, comprising: a beverage unit supplying the beverage under pressure, a nozzle in fluid communication with the beverage unit such that the nozzle generates a jet of the beverage, and a receiving unit into which the jet is directed, the receiving unit comprising: a chamber having a drain opening and a *channel extending to the nozzle*, and a jet impact member disposed within the chamber and having a top which does not contact an inner wall of the chamber,

wherein the nozzle and the jet impact member are mutually oriented such that the jet hits against at least a portion of the top of the jet impact member so that the beverage, after hitting against the jet impact member, leaves the chamber through the drain opening in the form of the beverage having a foam layer, *wherein air can be supplied to the chamber exclusively through the drain opening.*”

Brouwer discloses an apparatus for preparing a beverage that includes a nozzle (4), which generates a jet (12) of the beverage that strikes a jet impact element (20) in a chamber (16). (*See* Brouwer, col. 4, ¶ [0020]). However, Brouwer explicitly discloses

“nozzle is positioned, in this example, at some distance from the inlet opening 30 of the channel 28. As a result, air 34 is, in use, also drawn by the jet 12 into the chamber 16 via the inlet opening 30 of the channel 28. The product supply opening 32 of the chamber 16 hereby also functions as an air supply opening 32’.” (*See Id.*, col. 5, ¶ [0023], Figs. 1-2).

In contrast, claim 1 recites that the chamber has “*a channel extending to the nozzle.*” Brouwer explicitly discloses that the nozzle is at some distance from the inlet opening of the chamber. The result of this channel extending to the nozzle is further clarified in claim 1 which also recites that “*air can be supplied to the chamber exclusively through the drain opening.*” The air supply opening 32’ of Brouwer clearly teaches away from this exclusivity. Therefore, it is respectfully submitted that claim 1 and its dependent claims 2-26 and 66 are allowable over Brouwer.

**CONCLUSION**

In light of the foregoing, Applicants respectfully submit that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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